

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ANTHONY STOKES,

Petitioner,

Case Number: 06-CV-10734
Honorable George Caram Steeh

v.

HUGH WOLFENBARGER,

Respondent.

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ORDER GRANTING PETITIONER'S MOTION TO EXPAND THE RECORD

Petitioner, Anthony Stokes, a state inmate currently incarcerated at the Mound Correctional Facility in Detroit, Michigan, has filed a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, alleging that he is being held in violation of his constitutional rights. Before the Court now is Petitioner's motion to expand the record.

Petitioner filed his petition with this Court on February 17, 2006. This Court issued an Order requiring Respondent to respond to that petition by September 18, 2006. Respondent filed its timely response. Respondent filed the necessary Rule 5 materials on October 13, 2006. Regarding the filing of the Rule 5 materials, Petitioner's present motion is based on the fact that Respondent failed to file the necessary record(s) from the preliminary examination in this case. Petitioner is requesting that this Court order Respondent to file those materials. On that basis, the Court will grant Petitioner's motion.

Rule 7 (a) of the Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254, indicates that if a habeas petition is not summarily dismissed, the district court judge "may direct the record be expanded by the parties by the inclusion of additional materials relevant to the determination of

the merits of the petition.” A federal district court judge may employ a variety of measures to avoid the necessity of an evidentiary hearing in a habeas case, including the direction to expand the record to include evidentiary materials that may resolve the factual dispute without the need for an evidentiary hearing. *Blackledge v. Allison*, 431 U.S. 63, 81-82 (1977).

In the present case, Petitioner requests the Court to expand the record to include materials which may support his position in his case. Because these materials may help resolve any factual disputes in this case, the Court will permit the court record to be expanded to all records, transcripts, etc., from the preliminary examination in this case, including all testimony from Officer Mitchell.

Accordingly, the Court **GRANTS** Petitioner’s Motion to Expand the Record. Respondent is ordered to file all necessary Rule 5 material not filed with this Court, including all transcripts from the preliminary examination in this case. Respondent shall file those materials within fourteen (14) days from the date of this order.

Dated: October 18, 2007

S/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

<p style="text-align: center;">CERTIFICATE OF SERVICE</p> <p style="text-align: center;">Copies of this Order were served upon attorneys of record on October 18, 2007, by electronic and/or ordinary mail.</p> <p style="text-align: center;"><u>S/Josephine Chaffee</u> Deputy Clerk</p>
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